

**Letter of Findings: 65-20220038
Indiana Overweight Proposed Assessment
For the Year 2022**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department did not agree that Indiana Motor Carrier established that the imposition of a \$1,500 oversize/overweight penalty was unwarranted or excessive.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-11; IC § 9-20-18-14.5; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of an oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of providing its customers "cost effective transportation, logistics, and material handling" services out of three separate locations. Besides transportation services, Taxpayer also provides stone "blending, screening, and crushing" services. In addition, Taxpayer operates a ship loading facility. Taxpayer also rents customers loading equipment, excavators, stone crushers, screening plants, and conveyor equipment. Publicly available information indicates that Taxpayer operates 136 "power units" and employs 152 drivers.

In preparing to operate one of its vehicles on Indiana highways, Taxpayer obtained a M-233P "special weight" permit allowing the vehicle to travel along a specifically designated route. The permit contained certain restrictions as follows:

- The vehicle's single axle weight could not exceed 18,000 pounds per axle.
- No axle in any axle combination could exceed 13,000 per axle except for one tandem group which could weigh 16,000 pounds per axle or a total of 32,000 pounds.
- The vehicle's gross weight could not exceed 134,000 pounds for certain portions of the designated route.
- The vehicle's gross weight could not exceed 90,000 pounds on the remainder of the designated route.

In effect, Taxpayer was granted special permission to operate a specific vehicle, on a specific Indiana route, with specific weight restrictions, during a 24-hour window of time.

In December 2021, Taxpayer had occasion to operate one of its vehicles on an Indiana highway. In doing so, Taxpayer's vehicle was carrying a load of charcoal briquettes and was stopped by the Indiana State Police while traveling on U.S. Highway I-94. The vehicle and its load were found to weigh 113,620 pounds which was more than the 80,000 pounds allowed. Taxpayer did not possess the specific permit to transport an oversized or overweight load. In addition, the vehicle was not operating on the route stipulated in the M-233P "special weight" permit; the vehicle should have been traveling on U.S. Highway 20. As a result, the state police impounded Taxpayer's vehicle.

The Indiana Department of Revenue ("Department") issued a \$1,500 "civil penalty" which the Department, in its notice and proposed assessment sent Taxpayer, described as "the maximum civil amount that may be imposed by Indiana law"

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. In its protest, Taxpayer asked for a "[f]inal determination without a hearing." Nonetheless, Taxpayer was provided an opportunity to explain the basis for its protest on June 2, 2022, but Taxpayer's representative chose not to participate. This Letter of Findings results and is based on Taxpayer's written protest and the documentation within the Department's file.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that, as noted above, the \$1,500 penalty was excessive and should be reduced. Taxpayer explains as follows:

Our driver did have a permit. He had received a permit the Friday prior to [the date of violation] and was told to take this route as the highway was closed. He was not able to complete this load on Friday. Dispatch got him another permit on Monday. He did not read the whole permit and assumed it was the same route as Friday. Error on driver's part.

[Taxpayer] paid to get the equipment out of impound and the fine of course is a considerable amount. The amount of money we have spent on this far exceeds the amount we were paid for hauling this load. We have retrained our drivers regarding Indiana permits which should help to keep these errors from happening.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may also subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop. In other words, the \$1,500 penalty at issue is *over and above any other penalty paid to the local jurisdiction*.

The Department is not entirely unsympathetic to Taxpayer's business concerns and the circumstances surrounding the incident. However, Taxpayer has presented no specific mitigating circumstances which would lead the Department to reduce the \$1,500 penalty. Taxpayer is a large, sophisticated company which has extensive experience in these matters. The vehicle was being operated in this state and entirely under the control

and responsibility of Taxpayer.

Department respectfully declines to waive or reduce the penalty.

FINDING

Taxpayer's protest is denied.

June 14, 2022

Posted: 04/26/2023 by Legislative Services Agency

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